

AMENDED IN ASSEMBLY AUGUST 24, 2006

AMENDED IN ASSEMBLY AUGUST 21, 2006

AMENDED IN ASSEMBLY JUNE 27, 2006

AMENDED IN SENATE MAY 2, 2006

AMENDED IN SENATE APRIL 4, 2006

SENATE BILL

No. 1716

Introduced by Senator Bowen

(Principal coauthor: Assembly Member Jones)

February 24, 2006

An act to amend Sections 1850 and 1851 of, and to add Section 1051 to, the Probate Code, and to add Section 5372 to the Welfare and Institutions Code, relating to conservatorships.

LEGISLATIVE COUNSEL'S DIGEST

SB 1716, as amended, Bowen. Conservatorships.

Existing law requires the court to review each conservatorship one year after the appointment of the conservator and biennially thereafter, except as specified. Existing law also requires the court investigator to visit the conservatee when the court review of the conservatorship is required, and to determine, among other things, whether the present conservator is acting in the best interests of the conservatee.

This bill would authorize the court, on and after July 1, 2007, to ~~order~~ *take appropriate action, including, but not limited to, ordering a review of the conservatorship at any other time, on it's own motion or upon request by any interested person.*

The bill would also require, on and after July 1, 2007, the court investigator, in determining whether the conservator is acting in the

best interest of the conservatee, to include an examination of the conservatee's placement, quality of care, and finances.

The bill would also prohibit, commencing January 1, 2008, and except as specified, ex parte communications between any party or attorney for the party and the court concerning a subject raised in pleadings filed pursuant to the Probate Code, and in proceedings to establish a conservatorship for persons who are gravely disabled as a result of a mental disorder or chronic alcoholism. The bill would require the Judicial Council to adopt a rule of court to implement these provisions by January 1, 2008.

The bill would incorporate additional changes to Sections 1850 and 1851 of the Probate Code proposed by both this bill and AB 1363, to take effect only if both bills are enacted and this bill is enacted last.

The bill would become operative only if AB 1363, SB 1116, and SB 1550 are enacted and become effective on or before January 1, 2007. *These acts would be known as the Omnibus Conservatorship and Guardianship Reform Act of 2006.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act, together with AB 1363 (Jones), SB
2 1116 (Scott), and SB 1550 (Figueroa), shall be known and may
3 be cited as the Omnibus Conservatorship and Guardianship
4 Reform Act of 2006.

5 ~~SECTION 1.~~

6 SEC. 2. Section 1051 is added to the Probate Code, to read:

7 1051. (a) In the absence of a stipulation to the contrary
8 between parties who have filed pleadings in a proceeding under
9 this code, there shall be no ex parte communications between any
10 party, or attorney for the party, and the court concerning a subject
11 raised in those pleadings, except as permitted or required by law.

12 (b) Notwithstanding subdivision (a), in any case upon which
13 the court has exercised its jurisdiction, the court may refer to the
14 court investigator or take other appropriate action in response to
15 an ex parte communication regarding either or both of the
16 following: (1) a fiduciary, as defined in Section 39, about the
17 fiduciary's performance of his or her duties and responsibilities,
18 and (2) a person who is the subject of a conservatorship or

guardianship proceeding under Division 4 (commencing with Section 1400). Any action by the court pursuant to this subdivision shall be consistent with due process and the requirements of this code. The court shall disclose the ex parte communication to all parties and counsel. The court may, for good cause, dispense with the disclosure if necessary to protect the ward or conservatee from harm.

(c) The Judicial Council shall, on or before January 1, 2008, adopt a rule of court to implement this section.

(d) Subdivisions (a) and (b) of this section shall become operative on January 1, 2008.

~~SEC. 2.~~

SEC. 3. Section 1850 of the Probate Code is amended to read:

1850. (a) Except as provided in subdivision (b), each conservatorship initiated pursuant to this part shall be reviewed by the court one year after the appointment of the conservator and biennially thereafter. The court may, on its own motion or ~~upon request, order a review of the conservatorship at any other time.~~ *upon request by any interested person, take appropriate action including, but not limited to, ordering a review of the conservatorship, including at a noticed hearing, and ordering the conservator to present an accounting of the assets of the estate pursuant to Section 2620.*

(b) This chapter does not apply to either of the following:

(1) A conservatorship for an absentee as defined in Section 1403.

(2) A conservatorship of the estate for a nonresident of this state where the conservatee is not present in this state.

(c) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2007.

SEC. 3.5. *Section 1850 of the Probate Code is amended to read:*

1850. (a) Except as provided in subdivision (b), each conservatorship initiated pursuant to this part shall be reviewed by the court ~~one year after the appointment of the conservator and biennially thereafter~~ *as follows:*

(1) At the expiration of six months after the initial appointment of the conservator, the court investigator shall visit the conservatee, conduct an investigation in accordance with the provisions of subdivision (a) of Section 1851, and report to the

1 court regarding the appropriateness of the conservatorship and
2 whether the conservator is acting in the best interests of the
3 conservatee regarding the conservatee's placement, quality of
4 care, including physical and mental treatment, and finances, The
5 court may, in response to the investigator's report, take
6 appropriate action including, but not limited to:

7 (A) Ordering a review of the conservatorship pursuant to
8 subdivision (b).

9 (B) Ordering the conservator to submit an accounting
10 pursuant to subdivision (a) of Section 2620.

11 (2) One year after the appointment of the conservator and
12 annually thereafter. However, at the review that occurs one year
13 after the appointment of the conservator, and every subsequent
14 review conducted pursuant to this paragraph, the court may set
15 the next review in two years if the court determines that the
16 conservator is acting in the best interest interests of the
17 conservatee. In these cases, the court shall require the
18 investigator to conduct an investigation pursuant to subdivision
19 (a) of Section 1851 one year before the next review and file a
20 status report tin the conservatee's court file regarding whether
21 the conservatorship still appears to be warranted and whether
22 the conservator is actin in the best interests of the conservatee. If
23 the investigator determines pursuant to this investigation that the
24 conservatorship still appears to be warranted and that the
25 conservator is acting in the best interest interests of the
26 conservatee regarding the conservatee's placement, quality of
27 care, including physical and mental treatment, and finances, no
28 hearing or court action in response to the investigator's report is
29 required.

30 (b) The court may, on its own motion or upon request by any
31 interested person, take appropriate action including, but not
32 limited to, ordering a review of the conservatorship, including at
33 a noticed hearing, and ordering the conservator to present an
34 accounting of the assets of the estate pursuant to Section 2620.

35 (c) Notice of a hearing pursuant to subdivision (b) shall be
36 provided to all persons listed in subdivision (b) of Section 1822.

37 ~~(b)~~

38 (d) This chapter does not apply to either of the following:

39 (1) A conservatorship for an absentee as defined in Section
40 1403.

1 (2) A conservatorship of the estate for a nonresident of this
2 state where the conservatee is not present in this state.

3 (e) *The amendments made to this section by the act adding this*
4 *subdivision shall become operative on July 1, 2007.*

5 ~~SEC. 3.~~

6 SEC. 4. Section 1851 of the Probate Code is amended to read:

7 1851. (a) When court review is required pursuant to Section
8 1850, the court investigator shall visit the conservatee. The court
9 investigator shall inform the conservatee personally that the
10 conservatee is under a conservatorship and shall give the name of
11 the conservator to the conservatee. The court investigator shall
12 determine whether the conservatee wishes to petition the court
13 for termination of the conservatorship, whether the conservatee is
14 still in need of the conservatorship, whether the present
15 conservator is acting in the best interests of the conservatee, and
16 whether the conservatee is capable of completing an affidavit of
17 voter registration. In determining whether the conservator is
18 acting in the best-interest ~~interests~~ of the conservatee, the court
19 investigator's evaluation shall include an examination of the
20 conservatee's placement, the ~~conservatee's~~ quality of care,
21 including physical and mental treatment, and the conservatee's
22 finances. If the court has made an order under Chapter 4
23 (commencing with Section 1870), the court investigator shall
24 determine whether the present condition of the conservatee is
25 such that the terms of the order should be modified or the order
26 revoked.

27 (b) The findings of the court investigator, including the facts
28 upon which the findings are based, shall be certified in writing to
29 the court not less than 15 days prior to the date of review. A copy
30 of the report shall be mailed to the conservator and to the
31 attorneys of record for the conservator and conservatee at the
32 same time it is certified to the court.

33 (c) In the case of a limited conservatee, the court investigator
34 shall make a recommendation regarding the continuation or
35 termination of the limited conservatorship.

36 (d) The court investigator may personally visit the conservator
37 and other persons as may be necessary to determine whether the
38 present conservator is acting in the best interests of the
39 conservatee.

(e) The report required by this section shall be confidential and shall be made available only to parties, persons given notice of the petition who have requested the report or who have appeared in the proceeding, their attorneys, and the court. The court shall have discretion at any other time to release the report if it would serve the interests of the conservatee. The clerk of the court shall make provision for limiting disclosure of the report exclusively to persons entitled thereto under this section.

(f) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2007.

SEC. 4.5. *Section 1851 of the Probate Code is amended to read:*

1851. (a) When court review is required pursuant to Section 1850, the court investigator shall, *without prior notice to the conservator except as ordered by the court for necessity or to prevent harm to the conservatee*, visit the conservatee. The court investigator shall inform the conservatee personally that the conservatee is under a conservatorship and shall give the name of the conservator to the conservatee. The court investigator shall determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of the conservatorship, whether the present conservator is acting in the best interests of the conservatee, and whether the conservatee is capable of completing an affidavit of voter registration. *In determining whether the conservator is acting in the best interests of the conservatee, the court investigator's evaluation shall include an examination of the conservatee's placement, the quality of care, including physical and mental treatment, and the conservatee's finances. To the greatest extent possible, the court investigator shall interview individuals set forth in subdivision (a) of Section 1826, in order to determine if the conservator is acting in the best interest interests of the conservatee.* If the court has made an order under Chapter 4 (commencing with Section 1870), the court investigator shall determine whether the present condition of the conservatee is such that the terms of the order should be modified or the order revoked. *Upon request of the court investigator, the conservator shall make available to the court investigator during the investigation for inspection and copying all books and*

1 *records, including receipts and any expenditures, of the*
2 *conservatorship.*

3 (b) The findings of the court investigator, including the facts
4 upon which the findings are based, shall be certified in writing to
5 the court not less than 15 days prior to the date of review. A copy
6 of the report shall be mailed to the conservator and to the
7 attorneys of record for the conservator and conservatee at the
8 same time it is certified to the court. *A copy of the report also*
9 *shall be mailed to the conservatee's spouse or registered*
10 *domestic partner, the conservatee's relatives in the first degree,*
11 *and, if there are no such relatives, to the next closest relative,*
12 *unless the court determines that the mailing will result in harm to*
13 *the conservatee.*

14 (c) In the case of a limited conservatee, the court investigator
15 shall make a recommendation regarding the continuation or
16 termination of the limited conservatorship.

17 (d) The court investigator may personally visit the conservator
18 and other persons as may be necessary to determine whether the
19 present conservator is acting in the best interests of the
20 conservatee.

21 (e) The report required by this section shall be confidential and
22 shall be made available only to parties, persons *described in*
23 *subdivision (b), persons* given notice of the petition who have
24 requested the report or who have appeared in the proceeding,
25 their attorneys, and the court. The court shall have discretion at
26 any other time to release the report if it would serve the interests
27 of the conservatee. The clerk of the court shall make provision
28 for limiting disclosure of the report exclusively to persons
29 entitled thereto under this section.

30 (f) *The amendments made to this section by the act adding this*
31 *subdivision shall become operative on July 1, 2007.*

32 ~~SEC. 4.~~

33 *SEC. 5.* Section 5372 is added to the Welfare and Institutions
34 Code, to read:

35 5372. (a) The provisions of Section 1051 of the Probate
36 Code shall apply to conservatorships established pursuant to this
37 chapter.

38 (b) The Judicial Council shall, on or before January 1, 2008,
39 adopt a rule of court to implement this section.

1 (c) Subdivision (a) of this section shall become operative on
2 January 1, 2008.

3 *SEC. 5.5. Section 3.5 of this bill incorporates amendments to*
4 *Section 1850 of the Probate Code proposed by both this bill and*
5 *AB 1363. It shall only become operative if (1) both bills are*
6 *enacted and become effective on or before January 1, 2007, (2)*
7 *each bill amends Section 1850 of the Probate Code, and (3) this*
8 *bill is enacted after AB 1363, in which case Section 3 of this bill*
9 *shall not become operative.*

10 *SEC. 5.7. Section 4.5 of this bill incorporates amendments to*
11 *Section 1851 of the Probate Code proposed by both this bill and*
12 *AB 1363. It shall only become operative if (1) both bills are*
13 *enacted and become effective on or before January 1, 2007, (2)*
14 *each bill amends Section 1851 of the Probate Code, and (3) this*
15 *bill is enacted after AB 1363, in which case Section 4 of this bill*
16 *shall not become operative.*

17 ~~SEC. 5.~~

18 *SEC. 6.* This act shall become operative only if Assembly Bill
19 1363, Senate Bill 1116, and Senate Bill 1550 of the 2005–06
20 Regular Session are enacted and become effective on or before
21 January 1, 2007.